IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5313 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

G S R T C

Versus

BAJANIA JAGIRSING RAMCHANDRA GOHIL

Appearance:

1. Special Civil Application No. 5313 of 1995

MR SK BUKHARI for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/07/2002

ORAL JUDGEMENT

#. The respondent workman was dismissed from service as he was found in drunken condition. At the relevant time, he was serving as driver and it was found that, after completing his first trip, he was found in a drunken

condition and that he was under the influence of alcohol. On the aforesaid basis, inquiry was conducted and ultimately, the respondent workman was dismissed from service. The said action was challenged by him by raising the industrial dispute. The said dispute was referred to the Labour Court, Bharuch and ultimately the aforesaid reference being Reference (LCB) 146 of 1991 was allowed by the Labour Court, Bharuch and the order of dismissal was set aside. The concerned workman was ordered to be reinstated in service with 40% back wages for the intervening period. The said award is challenged by way of this petition.

#. After the award, the petitioner Corporation has already complied with the order of reinstatement and it is not in dispute that the respondent is already reinstated on his original post.

#. On behalf of the Corporation, it is argued by Mr.Bukhari that since the misconduct is proved against the concerned workman, the Labour Court should not have interfered with the finding of fact recorded by the disciplinary authority. It is argued that, in any case, the concerned workman should not have been awarded back wages for the intervening period.

#. On the other-hand, Mr.Rathod submitted that the Labour Court has given very cogent reasons for setting aside the order of dismissal. He further submitted that, even though there is no evidence worth the name in any manner, the disciplinary authority dismissed the concerned workman from service.

#. It is required to be noted that, concerned workman is now already reinstated by the petitioner Corporation itself in compliance with the award of the Labour Court. It is also required to be noted that there is absolutely no evidence worth the name for coming to the conclusion that the concerned workman had consumed alcohol on the relevant day. His blood sample was not taken; no criminal case was filed. In my view, therefore, the Labour Court has given appropriate reasoning in the order for coming to the conclusion that the said misconduct is not proved at all as there is no evidence worth the name. The Labour Court has found that the conductor was the best witness, but he was not examined by the Corporation. It is found that the defence of the workman was not taken into consideration at all by the inquiry officer. Under the circumstances, the Labour Court has not agreed with the finding of the inquiry officer. In my view, it cannot be said that the Labour Court has committed any

error in coming to the aforesaid conclusion, especially when this Court is not exercising the appellate powers over the order of the Labour Court. Even otherwise, since the concerned workman is already reinstated by the petitioner Corporation, no interference of this Court is now called for so far as the reinstatement order is concerned. So far as the order it relates to the payment of back wages is concerned, it is submitted by Mr.Bukhari that the same may be set aside. On the other-hand Mr.Rathod submitted that the concerned workman was put in a miserable condition for the intervening period and for few days, he earned Rs.60 - 70 per month. He also submitted that the concerned workman had undergone a great agony and according to him, in the facts and circumstances of the case, the order of back wages is not required to be interfered with. Ultimately, the said question is left to the Court by both the sides.

#. Considering the facts and circumstances of the case and considering the fact that the respondent is a driver, in my view, it is not possible to believe that, he must not have earned some amount. Normally, a driver would not remain idle for want of driving. Even there is no positive evidence in this behalf. In my view, it would be just and proper if the back wages are reduced from 40% to 20%. Accordingly, the order of the Labour Court is modified so far as it relates to the payment of back wages and instead of 40% back wages, the respondent workman now will be entitled to the payment of back wages upto 20% for the intervening period. Rest of the order of the Labour Court is confirmed. The petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)